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# Statement on behalf of the New York State Society of Certified Public Accountants in opposition to HR 2657; Before the Committee on the Judiciary; House of Representatives 80th Congress, Second Session; H. R. 2657

New York State Society of Certified Public Accountants

United States. Congress. House. Committee on the Judiciary

Before The

COMMITTEE ON THE JUDICIARY

House of Representatives

80th Congress, Second Session

HR 2657

*Statement on behalf of*

THE NEW YORK STATE SOCIETY OF

CERTIFIED PUBLIC ACCOUNTANTS

In Opposition to HR 2657

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This statement expresses the opposition of the New York State Society of Certified Public Accountants to HR 2657.

The Society has more than 5,000 members, all of whom are certified public accountants practicing in the State of New York. The great majority of the members of the Society actively engage in practice before one or more of the administrative agencies of the federal government. All of them are qualified so to engage and consequently all are adversely affected by the provisions of HR 2657.

The Society does not in any way oppose the provisions of HR 2657 which seek to facilitate the admission of lawyers to practice before administrative agencies. Nor does it oppose proper regulation of administrative practitioners to protect the public when the needs of the public have been determined by investigation and the regulations are appropriate to the needs so determined.

The Society does, however, oppose most vigorously those provisions of the Bill, which, unsupported by investigation and in sharp contrast to the provisions affecting lawyers, drastically cut down, limit and restrict the practice before administrative agencies which is now and has for many years been carried on by certified public accountants and other experts.

**Summary of Opposition to HR 2657.**

The opposition of the New York Society of Certified Public Accountants to those provisions of HR 2657 affecting lay experts is based upon the following grounds:

**HR 2657 would arbitrarily exclude qualified lay experts from the bulk of administrative practice.**

**HR 2657 would effect a complete reversal of the policy embodied in the Administrative Procedure Act and Other Acts of Congress.**

**HR 2657 discriminates unnecessarily against lay experts in favor of lawyers in respect of admission to practice in those agency proceedings where both may participate.**

**HR 2657 would unduly restrict the power of agencies to regulate practice before them and would unnecessarily formalize agency proceedings.**

**HR 2657 imposes an unnecessary and unwarranted burden and expense upon the federal government, the agencies affected by the Act and upon the public.**

**There is no showing of any factual basis for the drastic changes in administrative practice proposed by HR 2657.**

**In so far as HR 2657 affects the practice of certified public accountants in the tax field, it appears affirmatively that it is contrary to the public interest.**

For all of these reasons it is our recommendation that HR 2657 in so far as it affects lay experts should be reported adversely and no legislation on that subject should be considered until thorough-going investigation has determined its necessity.

**HR 2657 Would Arbitrarily Exclude Qualified Lay Experts from the Bulk of Administrative Practice.**

HR 2657 purports to be merely a measure regulating administrative practitioners. Despite this fact the most important effect of the Bill upon lay practitioners will be

accomplished by apparently incidental provisions of Section 6 which would exclude all practitioners who are not lawyers from large areas of administrative practice.

These provisions require the most careful study for their effect can in no wise be evaluated by a reading of HR 2657 itself. Lay experts are absolutely excluded from agency proceedings not by reason of their nature or subject matter, but rather because of their incidental and in many cases, minor procedural characteristics. Consequently, determination of the extent of the exclusion effected by the Bill, requires reference to every statute relating in any way to the conduct of agency proceedings.

The Bill makes any one of the following three incidental characteristics the basis for absolute exclusion of lay experts from agency proceedings:

1. The fact that proceedings are conducted "pursuant to Sections 7 or 8 of the Administrative Procedure Act."

2. The fact that the proceedings are "in connection with any form of compulsory process."

3. The fact that the governing statute "provides only for appearance in person or by attorney or counsel."

This Committee is familiar with the Administrative Procedure Act. It is, therefore, not necessary to detail at length the number and variety of agency proceedings which are covered by Sections 7 and 8 of that Act.

To cite here just one illustration—under Section 20 of the Public Utility Holding Company Act the Commission has authority to issue an order after hearing prescribing rules of accounting for companies affected by the Act. It is customary for certified public accountants to appear on behalf of their clients in such hearings, as would seem only natural since the hearings have to do solely with accounting matters in which they are most expert. Nevertheless, since these are hearings under Sections 7 and 8 of the Administrative Procedure Act, this Bill would require a lawyer to appear with the accountant in all such proceedings.

The Attorney General in his report to the Committee opposing the Bill points out as one of the grounds of his opposition that these exclusionary provisions "might unnecessarily handicap an agency by depriving it of advice of persons having technical training or special skills." He further points out that this is particularly true in view of the fact that "many comparatively simple proceedings are technically subject to sections 7 and 8 of the Administrative Procedure Act * * *."

The second category of proceedings from which all but lawyers are summarily excluded is, if anything, even more arbitrarily defined. It is impossible to tell with any degree of certainty just what is meant by a proceeding "in connection with any form of compulsory process".

Does this mean any type of proceeding in which compulsory process is available to the agency? If so, it covers practically every possible agency proceeding, since under the statutes constituting particular agencies and defining their powers, provision for some form of compulsory process is nearly always made.

Does it mean only proceedings in which compulsory process is actually issued? If so, exclusion of lay experts would depend upon the purely haphazard circumstance that at some stage in the proceeding it might become necessary to exercise compulsion to obtain the testimony of a witness or the production of a document. Under this interpretation, no matter how far the proceedings had advanced, the non-lawyer expert would be required, under pain of criminal penalties, immediately to withdraw and a lawyer would have to be substituted in his place.

So fortuitous and capricious is the operation of this provision that it would, without direct reference, exclude accountants from a large area of Treasury practice where for years they have customarily and ably represented the public. This is true because in all Treasury proceedings compulsory process is available, and often it is used.

The third category of proceedings from which all but lawyers are excluded is not only arbitrary but gives to purely incidental provisions of other statutes a connotation

never contemplated at the time of their enactment. A single example will suffice to illustrate this point. Section 17 (3) of the Interstate Commerce Act provides that a party may appear before the Interstate Commerce Commission in person or by attorney. That section applies to all proceedings before the Interstate Commerce Commission and there is no other provision in the Act for appearances.

When the language of this Bill is read against that provision of the Interstate Commerce Act it becomes apparent that under the terms of the Bill the Interstate Commerce Commission would have no authority to permit any sort of practice before it by experts who were not lawyers. This, despite the fact that Interstate Commerce Commission practitioners who are not lawyers have for years represented parties in many and varied matters before the Interstate Commerce Commission.

**HR 2657 Would Effect a Complete Reversal of the Policy Embodied in the Administrative Procedure Act and Other Acts of Congress.**

The employment of procedural aspects of agency practice to mark out the fields exclusively reserved for lawyers is particularly surprising in view of the provisions of the Administrative Procedure Act. That Act, enacted little more than a year ago, expressly preserves the rights of certified public accountants and other experts to continue to practice before administrative agencies, and explicitly negatives the importance of the procedural tests which this Bill would use for the purpose of excluding lay experts from such practice.

That Act in Section 6(a) provides that any person *compelled* to appear in person before any agency or representative thereof shall be accorded the right to be accompanied, represented and advised by counsel, or, if permitted by the agency, by other qualified representative. It further provides that every party shall be accorded the right to appear in person or by or with counsel or other duly qualified representative in *any agency proceeding.*

The debates concerning the Act both in the House and in the Senate make it expressly clear that the purpose of

the Congress in including these provisions in the Act was to preserve the right of accountants and other non-lawyer experts to continue to practice before administrative agencies.

Thus in the debate in the House, Mr. Walter of this Committee was asked by another member of the House:

> "It is the intent of the Committee that because a person is not a member of the Bar he would not be permitted to appear before an agency?"
>
> *Mr. Walter:* "Of course not, and we say so in the Bill. We have taken care of certified public accountants and other experts who have been practicing for years before particular agencies."

It is interesting to note that the foregoing colloquy occurred in the course of the discussion of the amendment to the Administrative Procedure Act proposed by Mr. Kefauver. That amendment has been incorporated in the record before the Committee. The New York State Society of Certified Public Accountants would have no objection to such an amendment of the Administrative Procedure Act.

Similarly in the Senate when the Bill was debated and Senator Austin asked Senator McCarran, who was the then Chairman of the Senate Judiciary Committee, the following question about the provisions of Section 6(a):

> "Does the Senator construe that language as authorizing, for example, a principal to be represented by an accountant?"
>
> *Senator McCarran:* "The answer is emphatically 'yes.'"

The result is the same whether we examine the history of administrative practice generally or whether we examine the legislative history of particular areas of administrative practice affected by this Bill. Thus, for example, the Bill would exclude certified public accountants from practice before the Tax Court of the United States since compulsory process is always available and generally used there.

Accountants have enjoyed the privilege of practice there from the time the Court was first founded as the Board of Tax Appeals. Indeed, the qualifications of accountants for practice in that Court have been given express recognition by the Supreme Court of the United States in the case of *Goldsmith* v. *Board of Tax Appeals,* 270 U. S. 117, 121. In that case the Court said:

> "We think that the character of the work to be done by the Board, the quasi-judicial nature of its duties, the magnitude of the interests to be affected by its decisions, all require that those who represent the tax-payers in the hearings should be persons whose qualities as lawyers *or accountants* will secure proper service to their clients and to help the Board in the discharge of its important duties." (Italics supplied.)

This statement of the opinion of the highest law court of the country as to the competence of accountants to appear in the Tax Court is completely at variance with the underlying philosophy, purpose and effect of HR 2657.

When the same question was recently before the Congress, this body reached precisely the same conclusion as the Supreme Court. In 1942, when the Board of Tax Appeals was changed to the Tax Court of the United States, Congress expressly preserved the right of certified public accountants to appear before the court.

These affirmative and unequivocal endorsements by Congress and the Supreme Court of established administrative practice should not be set aside without the strongest showing that the facts have changed.

**HR 2657 Discriminates Unnecessarily Against Lay Experts in Favor of Lawyers in Respect of Admission to Practice in Those Agency Proceedings Where Both May Participate.**

Obviously, the most important discrimination in favor of lawyers which HR 2657 effects is contained in those provisions which would give lawyers an unchallengeable monopoly of the bulk of all agency proceedings. The Bill

goes further, however, and even in respect of that residue of agency proceedings in which lay experts would still be permitted to practice, it is weighted heavily in favor of lawyers.

To the extent that these discriminatory provisions merely result in making admission to practice before administrative agencies easier for the lawyers or in making their disbarment from practice before administrative agencies more difficult, they are unobjectionable.

Decidedly objectionable, however, are the provisions of the Bill which would interpose wholly arbitrary and unreasonable obstacles, procedural and otherwise, to the admission of any lay expert to even the most limited practice before administrative agencies.

The Bill does not leave open to the agencies the determination of the qualifications necessary for practice before them. On the contrary, it requires that any agency which admits a non-lawyer to any practice before it, however strictly limited such admission may be, must first conduct an examination and investigation of the non-lawyer applicant. The agency must then certify to the Credentials Committee that the applicant possesses—whether or not they are all necessary for practice before the particular agency—the following extraordinary qualifications:

> "scientific training"
> "experience"
> "special competence"
> "peculiar technical ability"
> "knowledge of legal requirements"
> "other qualifications requisite for the adequate performance of the duties of a practitioner for the protection of clients and the attainment or preservation of their rights."

Assuming that an agency is willing to certify that any particular applicant possesses the aggregate of these special and unusual qualifications, that applicant is nevertheless not yet entitled to engage in the limited practice permitted by the Bill before that agency. He must further satisfy a Credentials Committee of five members, four of whom must

be lawyers and all of whom may be lawyers, of his "knowledge of professional responsibilities, good moral character, repute, and fitness."

Lest there should be any doubt that the object of the Bill is to exclude non-lawyers from practice to the greatest extent possible, this provision goes on to state that the standards of character, knowledge of professional responsibility, repute and fitness shall be "not less than" those applicable to lawyers—presumably there is no bar to their being as much greater as the Credentials Committee may see fit to make them. The Bill further provides that even when all of these tests have been met, the non-lawyer applicant may receive only "revocable" credentials to practice.

There is no need to labor the point of these provisions. In the guise of regulation they are designed to put as many obstacles as possible in the way of practice by lay experts. As the Interstate Commerce Commission has well expressed it in its report to the Committee opposing the Bill: "Section 6 is the heart of what we believe is the real purpose of the Bill, as it restricts the lay practitioner to the least possible participation in agency proceedings."

**HR 2657 Would Unduly Restrict the Power of Agencies to Regulate Practice Before Them and Would Unnecessarily Formalize Agency Proceedings.**

The most important restriction upon the power of agencies to regulate practice before them is effected by the exclusionary provisions of the Bill. These deny an agency the power to admit lay experts to practice in whatever manner and to whatever extent the agency finds to be in the public interest.

The Bill further restricts the agencies by denying to them the power to restrict to qualified persons participation in such phases of agency administration as do not come within the definition of "agency proceedings" adopted by the Bill. In Section 5, the Bill provides that no agency "shall be deemed to permit any

person to * * * render service save the authorized participation in agency proceedings by holders of credentials." This, for example, would prevent the Treasury Department from adopting a regulation limiting the preparation of complicated income tax returns to qualified persons specifically authorized by the Treasury to perform that service. This is so because such a regulation would amount to an authorization to render service other than the participation in agency proceedings. For the same reason neither could the Securities and Exchange Commission by regulation require that persons who assisted others in the preparation of registration statements be lawyers.

Further, this provision makes for doubt and uncertainty as to the extent of the authorization to practice granted to any individual under the Act. The Act appears incongruously to say that authorization to participate in an agency proceeding does not include authority to do anything in preparation for such participation or ancillary to it. Obviously, no proper purpose can be served by such a provision, and its incorporation in a statute, every violation of which is made a crime, is questionable in the extreme.

An additional restriction upon agency practice is the provision of Section 4 of the Bill that "presiding and deciding officers in any agency proceeding shall conduct themselves in accordance with the general requirements applicable to members of the judiciary." To the extent that this provision merely requires that administrative officials observe a high ethical standard of conduct it is of course unobjectionable, although there is no showing that it is needed.

The provision, however, would seem as well to carry a direction that all agency proceedings be conducted with courtroom formality. As the Treasury Report to the Committee points out, under the broad definition adopted by the Bill, the term "agency proceeding" would embrace almost every aspect of the day to day conduct of agency business. This highlights the lack of appreciation or understanding of the nature of administrative operation which

is the basic deficiency in the approach of this Bill to the problems of the administrative practice.

The fact is, as the Attorney General points out in his report to the Committee, that the agency officials to whom this direction is addressed are to a large extent lay experts. In practically no instance are even the top agency officials required to be lawyers and in most instances one or more are not.

Without extending this statement by a review of all agencies, it appears that one or more lay experts are top officials or commissioners of the following important ones: Civil Aeronautics Board, Federal Power Commission, Food and Drug Administration, Interstate Commerce Commission, National Labor Relations Board, United States Maritime Commission, Tariff Commission. The Treasury Department, of course, in the key positions having to do with the examination and audit of tax returns is staffed preponderately by accountants and not lawyers.

The Bill imposes on such officials unnecessary legalistic formality and produces a most peculiar anomaly. Although the presiding officers and the officers representing the government's interests are lay experts, members of the public are denied similar representation and are forced to present their case through lawyers. The complete absence of justification in logic or necessity for such requirements is obvious.

**HR 2657 Imposes an Unnecessary and Unwarranted Burden and Expense Upon the Federal Government, the Agencies Affected by the Act and Upon the Public.**

Wholly apart from the many affirmatively undesirable features of the Bill, there is the further objection that if enacted it would, without necessity, impose a great burden and expense upon the federal government and upon the public. This would occur in three separate and distinct ways.

The first way in which this Bill would be burdensome and expensive is by adding to the existing administrative agencies still another in the form of the so-called Creden-

tials Committee. Such an agency would require an extensive staff in order to carry out the function assigned it by the Bill. At the present time, according to our information, there are approximately 70,000 attorneys and agents admitted to practice before the Treasury Department alone. The number of practitioners before all the government agencies combined is enormous. If the Credentials Committee should even pretend to give adequate consideration to the multitude of applications it would receive, it would have to build up a huge staff of clerks and functionaries and it would soon be asking for budget appropriations to maintain them.

The second way in which the Bill would be expensive and burdensome is by increasing the work of the existing administrative agencies. It would impose upon them the burden of making examinations and investigations to determine whether a non-lawyer applicant for admission to practice possesses the many special qualifications set forth in Section 6 of the Bill,—irrespective of whether or not those qualifications have any relation to the competence of the applicant to practice before the particular agency.

Seemingly, under this Bill, the agencies would not be permitted to rely as they do now upon the fact that a particular applicant is a member in good standing of a recognized and long-established profession. This would be true no matter how high the standards of that profession might be or how pertinent, to the particular field of practice involved.

Additionally, the Bill would require lay agents now enrolled to practice before any agency, who wish to apply for credentials to continue such practice, to obtain a certification by the agency as to the extent of the practice in which they have been engaged. The Treasury Department points out that if only half of the minimum estimated number of such agents presently enrolled to practice before it were to apply, no less than 4,000 separate investigations to determine the extent of the previous practice of each such applicant would be called for.

Inevitably, such an increase in the work of existing administrative agencies would soon be reflected, as it always is, in requests for increased appropriations.

The third way in which the Bill would be burdensome and expensive is by increasing the cost to the public of obtaining representation before existing administrative agencies. The public would still require the assistance of lay experts in the presentation of matter before presiding officers who are such experts and in contest with such experts representing the government.

It would still be necessary for the taxpayer to have the assistance of a certified public accountant in presenting a complicated tax case to the Bureau. It would still be necessary for the drug manufacturer who has a proceeding before the Pure Food and Drug Administration to have the facts he intends to present prepared by his chemist or biologist.

All that the Bill accomplishes in those situations and countless others which could be enumerated is to deny the public freedom of choice and peremptorily require that a lawyer be retained as well.

In the last analysis, it is obvious that if this legislation is enacted, the public either as taxpayers or as parties to agency proceedings, will as usual foot the bill. In return for that the public gains nothing but a restriction on its present freedom of choice as to the selection of a representative in agency proceedings. Plainly, such legislation should not be enacted unless there is a genuine and widespread public demand for it. Certainly it should not be enacted upon the sole demand of certain representatives of the single interested group which stands to profit by its enactment.

**There Is No Showing of a Factual Basis for the Drastic Changes in Administrative Practice Proposed by HR 2657.**

The stated purpose of HR 2657 is "to protect the public with respect to practitioners before administrative agencies." From the analysis of its provisions it abundantly appears that the Bill would effect drastic and sweep-

ing changes in the established practice of administrative agencies. Despite this fact, there is no showing of any specific condition, abuse or practice that needs to be corrected.

The statement of the representatives of the American Bar Association who have appeared as proponents of this Bill nowhere meets the issue. It does not contain even the barest scintilla of evidence of a situation or condition prevailing in present day practice before any administrative agency whch would warrant such a drastic remedy. The only attempt at such an approach to the problem is a reference to the report of the Attorney General's Committee on administrative procedure and that relates solely to the provisions of the Bill which would facilitate the admission of lawyers to practice.

The seriousness of this basic lack of justification for the proposed legislation so far as it affects lay practitioners is emphasized when we consider the reports to the Committee of the administrative agencies themselves. Obviously the agencies are in the best position to know whether this type of legislation is needed and whether its effects will be to increase the efficiency of the conduct of agency business and to benefit public dealing with such agencies. In almost every case the agencies, and particularly those before whom practice by non-lawyers is most customary, have indicated not only that there is no necessity for the Bill but that its provisions are adverse to the interests of parties to agency proceedings and of the public.

The agencies and executive departments which have objected to the Bill include the Treasury Department, the Interstate Commerce Commission, the Federal Security Agency, the Tariff Commission, the Department of Agriculture, the National Labor Relations Board, the National Railroad Adjustment Board, the National Mediation Board and the Railroad Retirement Board. In addition, the Federal Trade Commission and the Federal Reserve Board have reported that in their view the Bill is unnecessary which, in the case of a Bill such as this, is tantamount to an adverse report.

Only the Secretary of Commerce and the Postmaster General have reported generally in favor of the Bill, although the Postmaster General qualifies his comment by the statement that there is a general objection to the Bill in that "it would seem cumbersome in its operation." Finally, the Attorney General, whose position as chief law officer of the Government should give his opposition great weight, has reported against the Bill.

To say as the proponents of the Bill do in their statement that one or two of these reports do not have weight because the particular agencies are not affected by the Bill's provisions, completely misses the point. The investigation by this Committee is to determine whether there is any necessity or affirmative justification for a Bill such as this. The fact that the National Mediation Board has found nothing in its extensive experience with practice by non-lawyers which would justify provisions such as are contained in this Bill is cogent evidence that those provisions are unnecessary and consequently affirmatively undesirable. Nor is the force of this showing in any way diminished by the fact that the National Mediation Board may not be covered by the Bill.

The proponents of the Bill simply do not meet the substantial objections to the Bill which are raised in the overwhelming majority of agency reports to the Committee. Thus, for example, at page 10 of their statement they say with reference to the objections of the Federal Security Agency:

> "In specialized proceedings such as those before the Food and Drug Administration there is no bar to the appearance of experts as witnesses or for making special or limited submissions of data or views."

This does not meet the position of the Federal Security Agency that "*sole representation* by technical experts" in proceedings conducted pursuant to sections 7 and 8 of the Administrative Procedure Act is "frequently in the interest of the parties and of the public."

Similarly in their comment on the first part of section 6 of the Bill, appearing at page 13 of their statement, the proponents state of the National Labor Relations Board's objections:

> "This provision indicated the error of the National Labor Relations Board in supposing that non-lawyers would be barred from informal proceedings or those not conducted pursuant to sections 7 and 8 of the Administrative Procedure Act."

Obviously this in no way meets the objection of the National Labor Relations Board that the Bill would exclude non-lawyers from informal proceedings conducted pursuant to sections 7 and 8 of the Administrative Procedure Act—to say nothing of informal proceedings in connection with some form of compulsory process.

A final illustration of this type of treatment of these adverse reports by the proponents of the Bill is to be found in their characterization of the Attorney General's report on the Bill. They state of this:

> "I believe that the latter was not cognizant of the fact that non-lawyers are not barred from such proceedings [that is pursuant to sections 7 and 8 of the Administrative Procedure Act] for the limited and special purposes they now customarily serve."

Not only is there no showing anywhere that non-lawyers at the present time customarily appear in these proceedings for "limited and special purposes" but the reports of the agencies in many instances show the opposite to be true. They establish that it is the practice of non-lawyers in proceedings of this type to appear as sole representatives of the parties.

All of the evidence before this Committee leads inescapably to the conclusion that the burdensome restrictions upon the agencies and the public which this Bill seeks to impose are unsupported by any affirmative showing of need. It is also clear that in many areas the provisions of the Bill would be affirmatively injurious to the interests of the agencies and to the public.

**In so Far as HR 2657 Affects the Practice of Certified Public Accountants in the Tax Field, it Appears Affirmatively That it Is Contrary to Public Interest.**

Not only is there no showing that the drastic changes in established administrative practice proposed in the Bill are warranted by any existing conditions but in the field of tax practice which constitutes a major part of the administrative practice of the accounting profession the public record affirmatively establishes that these changes are against the public interest.

In this country, as in Great Britain, taxation has traditionally been the province of the accounting profession. Certified public accountants have participated in the tax field at every level and in every conceivable way.

Thus they have for many years advised and counselled the appropriate committees of the Congress with respect to the formulation of the tax laws themselves and they are constantly giving counsel to the Bureau of Internal Revenue with respect to the promulgation of regulations under the tax laws. Indeed the tax laws and the regulations are in the main an expression of sound accounting principles developed by the accounting profession over the years.

On the administrative level, the officials charged with the enforcement of the tax laws and with their interpretation on behalf of the government are in the great majority members of the accounting profession.

Finally, on the level of the taxpayer, it is the certified public accountant to whom in most cases, the businessman turns for advice, counsel and representation in his tax problems.

It is no wonder that an eminent lawyer, former Undersecretary of the Treasury Mr. Arthur Ballantine, has said: "The mind of the Bureau . . . is to a very considerable extent an accounting mind." Nor is it surprising that the public has turned to "accounting minds" for representation before the Treasury Department.

In view of the continuous connection of certified public accountants with the administration of Federal tax laws,

it is not surprising that most tax controversies are resolved by proceedings in which they participate. Such proceedings generally consist of hearings which, in reality, are conferences between Internal Revenue Agents, usually accountants, representing the Government, and other accountants, representing the taxpayer. Mr. Acheson, Chairman of the Attorney General's Committee on Administrative Procedure, reported that 92 to 94% of all income tax cases are disposed of by informal administrative proceedings without resort to any court (Part II, p. 804 of Hearings on the Administrative Procedure Act). The Government has a vital interest—for taxes are the life-blood of government —in preserving this informal and consequently expeditious means of collecting taxes.

Despite the Government's need for simple methods of resolving tax controversies, the present Bill would greatly hamper such settlements. It would impose needless formality in tax proceedings. It would interpose obstacles to the admission of certified public accountants to practice in any of these proceedings, however informal, despite the fact that they are the persons most familiar with the accounting principles which the tax law embodies and are the persons most able to satisfy the Government as to the propriety of their calculations. Finally, the Bill would exclude accountants altogether from such proceedings as may come within the vague description of "proceedings in connection with any form of compulsory process."

In their statement the proponents of the Bill seek to dismiss these very substantial objections to the Bill as it affects the practice of certified public accountants before the Treasury Department merely by characterizing them as "fanciful and unfounded."

These restrictive provisions can only be premised on the assumption that certified public accountants are not competent to handle tax matters, or at least are not as competent as lawyers. This assumption is clearly contrary to fact.

The training which an accountant is required to undergo and the professional qualifications and standards which he

is required to meet in order to obtain his certificate as a certified public accountant all point to the special competency of accountants to represent taxpayers before the Treasury Department and in the Tax Court.

In the State of New York, for example, a candidate for admission to the Bar is not required to have taken even an elementary course in tax law. At least until 1943, no Federal tax questions have ever appeared on the New York State Bar examination. On the other hand, the CPA examinations in New York State have for many years contained a separate part of the examination devoted to Federal income taxation and the questions appearing there have been of such a character as to require the most thorough technical training in all phases of the subject.

The Treasury Department in its report to the Committee has characterized the Bill as defective because of its failure to accord recognition to the professional qualifications of certified public accountants. In its report the Treasury states:

> "The bill may be deemed defective in not making provisions with respect to some other professions comparable to those that it makes in section 5 with respect to lawyers. The Treasury Department believes that it might be feasible and desirable to provide by legislation for a system of licensing certified public accountants, administered by an overall agency, whereby each licensee would be authorized to practice accountancy before all departments and agencies in the executive branch of the Government, subject possibly to a limitation whereby each department and agency should by rule specify the types of 'agency proceedings' in which representation by certified public accountants is permitted within the particular department or agency."

When the general professional qualifications of lawyers as a group and of accountants as a group are considered in relation to the nature of the problems most often arising in tax practice, more than a suggestion arises that the accountants are not only as well qualified as the legal fraternity to handle such problems but may indeed be better qualified.

This suggestion gains great weight when we find it being advanced, not by representatives of the accounting profession, but by eminent representatives of the Bar itself.

As long ago as 1929, the New York State Bar Association in its Report recognized the special competence of accountants in the tax field, when it said: "The great field of taxation, including reporting to the Treasury Tax Unit and the Board of Tax Appeals, has been all but taken over by the accounting fraternity, *which seems to have proved itself the more fit to survive in such environment.*"

The same point has been made, time and again, in the public statements of representatives of the government, of officials of the Treasury Department, even of Bar Associations, and leading members of the Bar. These statements are compiled and gathered together in Appendix A to the statement filed with the Committee.

The American Bar Association itself, which we understand supports this Bill, as recently as 1943 has recognized, through an official spokesman and in its official publication, the fact that lay experts other than lawyers are better qualified to handle tax work for clients than are the lawyers themselves.

Mr. Weston Vernon, Jr., then Chairman of the Section of Taxation of the American Bar Association, writing in the Journal of the Association, stated:

> "From some quarters have come complaints that non-lawyers have been permitted to practice in this field [the tax field]. The Association's Committee on Unauthorized Practice reached the conclusion that until a larger number of lawyers throughout the United States were trained in tax work, clients would naturally entrust their tax work to persons most familiar with this field whether or not such persons were lawyers."

H.R. 2657 would have the effect of preventing clients, in Mr. Vernon's words, from entrusting their tax work to persons most familiar with that field,—or, would require them, if they wish to do so, to pay the fee of a lawyer supernumerary.

## CONCLUSION.

**HR 2657 in so Far as it Affects Lay Experts Should be Reported Adversely and no Legislation on That Subject Should be Considered Until Thorough-going Investigation Has Determined Its Necessity.**

The facts as to the record of the practice of certified public accountants in the tax field leave no room for doubt that HR 2657 would be against the public interest.

Obviously, the tax field is but one of many fields in which the impact of this Bill upon the practice of lay experts would be felt. There are many other administrative agencies dealing with other problems before which certified public accountants appear, including the S.E.C., the Federal Power Commission, the Interstate Commerce Commission, and others. We confidently assert that certified public accountants will also be found to have participated in such practice with distinction.

It is apparent, too, that there are many lay experts other than certified public accountants who practice before various administrative agencies in various fields for which their particular qualifications suit them.

If it is seriously contended that in some other field and among some other class of non-lawyer practitioners, practices or conditions exist which are detrimental to the public interest, then it is submitted that the correct procedure to safeguard the public interest is to make a thorough-going investigation of those conditions. If evidence of specific abuses which need to be remedied is developed, legislation should be drafted specifically addressed to such abuses and to the fields of practice in which they occur. If abuses exist in the practice of lay experts before the Patent Office, that furnishes no reason or excuse for banning or limiting the practice of traffic experts before the Interstate Commerce Commission, chemists before the Pure Food & Drug Administration, or certified public accountants before the Treasury Department.

An illustration in point as to the need for investigation which may be helpful to the Committee is furnished by the

legislative history in the New York Legislature of the Ehrlich Bill, a bill very similar in its effect to H. R. 2657. This bill sought, among other things, to exclude any but lawyers from representation of parties in administrative proceedings where the record of such proceedings was to be subject to judicial review. The bill would have affected certified public accountants on the state level in substantially the same manner that H. R. 2657 would affect them on the federal level, since they were and are engaged in practice in the field of taxation in the State of New York and before various State tax agencies. The Bill was opposed by the New York State Society and the Society recommended that its passage be deferred until a commissioner of the State appointed for the purpose had completed his investigation of administrative procedure generally within the State and his findings on this particular phase of the problem had become known.

The report of the commissioner, Hon. Robert Benjamin, when rendered, recommended that certified public accountants be permitted to continue to represent taxpayers "at any stage of a tax proceeding including the formal hearing stage." A copy of the Ehrlich Bill and the pertinent extracts from Commissioner Benjamin's report are appended to this statement as Appendix B.

No such investigation has been made of the subject matter of this Bill. No evidence as to specific practices or conditions sought to be remedied has been presented, and no specific remedies are provided. We submit that any measure, having such far reaching consequences and imposing such a potential burden and expense upon the government and the public as this, should not be enacted without at least as careful an investigation of its subject matter as preceded the enactment of the Administrative Procedure Act, whose policy it would reverse.

Respectfully submitted

MATHIAS F. CORREA
of Counsel.

# Appendix A.

## Statements of Government and Bar Association Officials respecting contributions of certified Public Accountants in Tax Field.

Address by Hon. J. Gilmer Korner, Jr., Chairman of the United States Board of Tax Appeals, delivered in October, 1925, before the Association of the Bar of the City of New York, and published in Vol. VII of "Lectures on Legal Topics", page 1:

> "Occasionally I hear complaints from lawyers to the effect that the tax practice has to a great extent been monopolized by the profession of accountancy and that that profession is not properly equipped by training and experience to handle the difficult problems presented by tax cases; that the taxing statutes are intricate and require the closest professional scrutiny to find and interpret their meaning. That this practice has to a large extent come into the hands of accountants, I do not deny. Neither do I deny that the tax laws do deserve and need the assistance of the legal profession in their framing, their interpretation and their administration. But I do deny that it is the fault of any one but the lawyers themselves that this interesting and lucrative practice has slipped from them. In the early days of the income tax—during the years from 1913 to 1916—the tax laws were simple and resolved themselves to a large degree into a mathematical calculation of a rate applied to a given income. The latter was not particularly complex and the legal profession found itself too conservative or too busy, or, as I believe, too disinterested to give any thought or attention to the matter.
>
> "*There was a younger profession, however, which was alive to the opportunities afforded and was quick to give itself with interest, diligence and enthusiasm to the mastery of this new field.* It it just here that the irony of circumstances becomes apparent. The world became embroiled in a war. Our country became a belligerent party. This demanded vast revenues. It likewise gave rise to vast incomes and

unprecedented business activity. Congress in effect declared that since war had made business, business should carry a large share of the burdens imposed by the war. The result was the enactment in 1917 of a Federal taxing statute of intricacies theretofore undreamed of. But the Revenue Act of 1917 was but the forerunner of a more intricate one yet to come. The Revenue Act of 1918 dealing as it did with the tremendous problem of raising revenues was complicated by problems of war and war business and by the still more difficult problems of a post-war readjustment which was imminent when that statute was enacted. These revenue acts involved billions of dollars. The disputes arising out of them involved hundreds of millions. Verily the bridegroom had arrived but the foolish handmaidens had no oil in their lamps—or to speak more accurately the oil was in the lamps of those other handmaidens who had been quietly trimming their lamps while their sisters slept. . . . Rulings were made and changed; regulations were promulgated and modified; opinions were rendered and revoked; decisions were made and reversed. Comparatively speaking, all was done by laymen. A veritable giant had come into existence and was groping its way through an unfamiliar labyrinth. Its eyes were dimmed because those who could throw light into the darkness were indifferent. Mistakes innumerable were made, of course. The Courts began to reap the whirlwind which you as officers of the court had helped to sow. And then our profession began to realize that that tide in the affairs of man which leads to fortune had been omitted.

"I would pause here to pay my respects to *that younger profession which to such a large extent carried this burden of tax administration on unaccustomed shoulders during those years.* If it had had the assistance of that other profession which it so sorely needed, there would be today, in my opinion, a different story to tell of the administration of the tax laws.

"It is easy to criticize in retrospect and point to the failures accompanying another's work, but I seriously wonder if our profession under the same conditions and without the assistance of the accountants would have done a better job of it."

Address by Hon. Charles M. Trammell, Member of the Board of Tax Appeals, delivered before the Texas Society of Certified Public Accountants in October, 1934:

> "You not only were instrumental thru your recommendations in the establishment of the Board, but you have been of assistance in carrying on its work. *When it was created the accountants were intrusted by the taxpayers of this country with the bulk of all tax problems.* This work naturally came to you in the regular course of your business of auditing books, directing how accounts should be set up and entries made to properly reflect income. It was only natural, therefore, that in any questions which arose as to the correct amount of the income which was subject to tax, you should be called upon to handle the matter in the Bureau of Internal Revenue.
>
> "When the Board was created one of the first questions before us was who should be admitted to practice. After consideration and deliberation we decided that Certified Public Accountants and lawyers should be admitted and no one else. It is a great responsibility to determine who shall or shall not be authorized to represent taxpayers in their controversies with the Government. To permit one to practice is an implied representation to the taxpaying public that such a one is competent and capable of doing so, morally as well as otherwise. We determined that your profession, however, like the legal profession, subjects its members to sufficient test to determine their fitness and qualifications of such a high standing both morally and from a standpoint of competency that we could safely accept the certificate of a State Examination Board as a sufficient evidence of qualification and fitness.
>
> "Lawyers have always been considered as officers of the court. As members of the bar of this tribunal, you have the same status as lawyers. * * *
>
> "In comparatively recent years your profession has made notable advancement. *You have taken a place along with doctors and lawyers as one of a learned profession.* In this age of complicated industrial development the accountant has taken an important and *practically an essential part.* No industrial enterprise can safely do without the services of an accountant any more than a community can get along

without a doctor. *The income tax laws, including excise tax law of 1909, have created an absolute necessity for your services.* New, better and more accurate systems of bookkeeping and accounting had to be devised. It was necessary that books reflect the facts. These circumstances have been the prime cause of the rapid development of accountancy as one of the professions. It is my opinion that future tax laws will give more and more effect to accounting principles in determining incomes subject to tax. This will increase the importance and value of your service. * * *

"I have referred to the valuable assistance your profession has rendered the Board. *It has also rendered an essential service in the proper administering of the income tax laws generally.* We, after careful consideration, admitted you to practice before the Board. This specific public recognition of the Certified Public Accountants, in my judgment, has been of great value to your profession as a whole. After the passage of the Revenue Act of 1926 which provided for appeals from the Board to the Circuit Courts of Appeal and by certiorari to the U. S. Supreme Court, the question again arose as to whether Certified Public Accountants or any other than lawyers should be admitted to practice before the Board. Again, after mature consideration, we decided not to change our rules in this respect." (The New York C. P. A., November, 1934.)

Robert G. Dodge, Esq., a leading member of the Massachusetts Bar, has stated:

"Tax work, as has often been pointed out, has been neglected by lawyers and the average lawyer does not know anything about it. In most law firms of any size there are one or two men who are doing it, but the others don't know anything about it.

"The public will always consult the man who is supposed to know about taxes. That is one reason why *it is the settled practice of the community to go to the accountant.*" (The New York C. P. A., June, 1944.)

Augustus Studer, Esq., President of the New Jersey Bar Association, has said:

"In the research which I have made on the topic 'The Lawyer and the Accountant,' I find that subject has been much discussed and much has been written about it. I find that three conclusions are repeated again and again:

"First, the two professions should cooperate as much as possible; second, each profession recognizes and respects the need of the other; and third, *there is no point at which it can be stated clearly that the place of the lawyer ends and the place of the certified public accountant begins, or, to put it the other way, the place of the certified public accountant ends and the place of the lawyer begins.* We are, in a way, tenants in common, each sharing an undivided one-half interest in the field of the other, with, of course, no division of fees.

"Ours is a much older and larger profession than yours, but though younger, smaller in number, and not so broad in scope, *your profession is no less vital or necessary than ours.* * * *.

"The lawyer, as a rule, has no mind for figures. I, for one, can hardly balance my checkbook each month, or make out my modest income-tax return each year, without the help of a deputy income-tax collector.* * *

"Certainly the lawyer should promptly ask for a certified public accountant when it comes to anything involving straight-line method, production method, declining-balance method, sinking-fund method, and fractional or weighted-years' method. If he does not, his client will.* * *

"If any lawyer needs proof of the importance and necessity of a certified public accountant, let him attempt to prepare an income-tax return for any corporation or partnership of any size. The income-tax law, itself, bristles with legal questions, but *the lawyer is rare who can complete intricate returns without the help of an accountant of ability.* The same is true of other kinds of tax work — of inheritance-tax returns in estates of any size (and there still are some) detailed reports or accounts in bankruptcy matters, corporate reorganizations, sales or large going businesses, and estate and trust accountings— to name but a few instances in which our joint efforts are desirable.* * *

"In New Jersey we have an excellent Institute for Practicing Lawyers, which is sponsored by a group of outstanding lawyers and which also functions with the full accord of the New Jersey State Bar Association—so much so, that the president of that Association each year is, ex officio, a member of the board of directors of the Institute. For several years now, that Institute has been giving full and comprehensive courses at night on taxes, which courses have been well attended by lawyers and *well conducted, either by certified public accountants,* or lawyers who specialize in tax work.* * *

"A lawyer of standing, who represents a great many businesses in an advisory capacity, told me only recently that there is hardly a day in which he is not confronted with a tax problem and that his regular custom is to confer with an accountant immediately when such problems arise." (Journal of Accountancy, May, 1944, pp. 368-9.)

An article appearing in 42 Michigan Law Review 1122 by Benjamin M. Quigg, Esq., (1944), states:

"Where the law in a particular field is wholly case-made it would seem that such field is exclusively for the licensed attorney; where the law is statutory and the statutes are interpreted by administrative regulations the current trend is to permit laymen or qualified experts other than lawyers to perform services in a representative capacity.

"*The legal profession as a matter of common practice has permitted accountants to operate in the tax field in the preparation of tax returns and in the giving of advice as to tax liability, and certified public accountants are admitted to practice before the United States Board of Tax Appeals. It would seem that these expert laymen are eminently qualified to practice in the field where the greater part of the work requires the solution of accounting problems, setting up values to be reflected on corporate books, and the determination of inventory, depreciation and reserves.*** *

"In arriving at any conclusion as to what constitutes the practice of law, it must be remembered that the primary purpose in barring lay persons from certain activities, whether they be the preparation of tax returns, drawing documents, or giving of advice, is

> not to preserve a monopoly for members of the Bar, but rather to protect the public from the evils of the practice of law by persons who are unqualified, untrained and without the guidance of suitable codes of professional ethics."

Cuthbert W. Baldwin, Esq., a leading Louisiana attorney, stated, in 1944:

> "There are certain businesses which are just as necessary in the community and have become just as much a part of it as our profession. * * * There is also the profession of accountancy, which has probably risen and reached a state of importance faster than any other profession. * * * *The accountants may know as much about the tax laws as lawyers".* (5 Louisiana Law Journal 600.)

In an article entitled "Unauthorized Practice by Laymen Specialists" appearing in 6 Texas Bar Journal 297 (August, 1943) D. Ray Owen, Jr., Esq., of the Salt Lake City, Utah, Bar stated:

> "Where the law in question is statutory and has been more or less conveniently interpreted and applied by the published regulations or directives of some federal or state administrative agency, then *by current standards of practice,* the field is open to the layman as well as the attorney and he may make his livelihood by advising his clients as to the nature of such law, its interpretation and application.
>
> "This anomalous situation has been permitted to develop and grow for many years in the field of taxation *with the tacit approval of the legal profession. Here the certified public accountant advises as to State and Federal tax law, resolves for his client, quotes questions of interpretation and construction, and counsels as to the application of the law to the factual problems presented. If the tax collector disagrees with his interpretation, the certified public accountant promptly assumes the role of attorney in fact and appears before the Administrative Tribunal as the representative of his client and argues his case as fully and in much the same manner as any attorney might do before a court of law. His right to so act before the Board of Tax Appeals has been recognized by its rules of practice."*

The New York County Lawyers Association recognized that where lay agencies could perform certain services more effectively than lawyers the Bar Associations should not attempt to intervene. The report of their Unlawful Practice of Law Committee for the year 1933 stated:

> "Meantime, the Bar itself has become restive. * * * It talks of 'prerogatives of the Bar' of invasions of the field of the lawyers, as though there was some economic justification for the maintenance of monopolistic privileges. * * * The remedy certainly does not lie merely in denunciation of lay agencies. As this committee has previously said, whenever lay agencies can perform functions for the benefit of the community more effectively and more efficiently than the Bar performs them, the Bar will have to permit these functions to be performed by lay agencies. It is *only in the field where there is injury to the public,* that the Bar may, because of its knowledge and experience, press for restraint of lay activities."

R. M. Stroud, Esq., of the Wisconsin Bar, stated in an address to the Wisconsin Bar Association:

> "After all, whether in the field under consideration, the non-lawyers are improperly engaging in the practice of law cannot be answered so satisfactorily by a technical analysis of what constitutes the practice of law, as by ascertaining what representative will best protect the rights of the taxpayer. From this viewpoint permit me to suggest certain practical considerations. Certain parts of the work —usually the earlier stages of ascertaining tax liability—only the accountant can efficiently perform; that work would be quite beyond the competency of the attorney. *In threshing out the problems of accounting with state or federal auditors the certified public accountant may be much more effective than the attorney.* Even in the appearance before the Tax Commission, or before the United States Board of Tax Appeals the accountant may be indispensable even where an attorney is in control, and not infrequently the work of the accountant will overshadow that of the lawyer. With respect to practice before the federal agencies in the determination of federal

taxation, the state has nothing to say, and the right of the certified public accountant to appear before the United States Board of Tax Appeals is expressly recognized. * * *

"* * * In view of the fact that *the issues in the field of taxation may, and so frequently do, involve only questions of accounting, but more particularly because those issues are tried only before administrative or quasi-judicial officers, I believe that until the case is ready for the courts the taxpayer cannot be limited in his choice of representatives to the attorney at law.* * * *

"The certified public accountant has his standards of proficiency and of ethics which may be no less exacting than the standards of those admitted to practice law. * * *" (Report of Wisconsin State Bar Ass'n. (1928) 68-69.)

In an article entitled "The Unauthorized Practice of Law" appearing in the American Bar Association Journal, Volume 16, at page 558, Paul P. Ashley, Esq. stated:

"It cannot be denied that many acts and functions proper to the lawyer's office—and for the doing of which he is especially trained—are also proper to other offices. We cannot successfully demand that the realtor refuse to answer every question involving legal knowledge; that the insurance expert refrain from explaining the legal significance of an insurance trust. *The accountant will continue to prepare tax returns and explain the law to his client.* Corporations and natural persons not legally trained are doing and apparently will continue to do, many things properly done in a law office. It will be tilting at a mill to seek to make *exclusively* ours those functions which, though *properly* ours are enjoyed by us as tenants in common with others. Yet, it seems that this overlapping of legitimate fields of endeavor is often ignored. *Lawyers search for protective barriers without realizing that they may be attempting to enclose common ground.* Definitions actually used in efforts to stifle the unauthorized practice of law show this tendency:

" 'The practice of law is any service involving legal knowledge, whether of representation, counsel,

or advocacy in or out of court, rendered in respect of the rights, duties, obligations, liabilities, or business relations of the one requesting the service.' (Clarence H. Kelsey in Lectures on Legal Topics.)

" 'Any service involving legal knowledge'! Legal knowledge is involved in many a business transaction. The definition tells the lawyers what he may properly do, and still be practicing law; it does not tell him what he but no one else may do. * * * They (statutory definitions like Mr. Kelsey's above quoted definition) apparently include acts which business practice tells us are being done and will continue to be done by laymen and corporations as well as by lawyers. *The definitions do not meet the true needs of defenders of the profession. Much as we like broad definitions as to the scope of the profession, we cannot hope to force them on a business community wherein the everyday custom is to the contrary.*

"And so we need a general acceptance of a new type of definition. We need a delineation of the field which is exclusively legal; a definition which excludes the activities of bankers, realtors, tax advisers, insurance experts, accountants, investment counsel, *ad infinitum*. We need a definition comprehending all matters which should be ours exclusively, yet not including activities which are ours competitively. More important, the public needs such a delineation for its guidance and protection. * * *

"In attempting to retain (secure?) too broad a field we are encouraging competition in the area which should be ours alone. We remove the blame from the unauthorized practice of law; we make of poaching a legitimate business and render it difficult for the public to see that the public will be injured. As long as a substantial part of the 'competition' seems harmless—except to the lawyers, for whom are shed few tears—every phase of unauthorized legal work will seem less odious. It should be as wrong, as blameful, for an unlicensed individual to do legal work as it is wrong for the untrained to administer strong medicines. Such will be the public sense only when legal practice is delineated so as to include only work which only the lawyer can properly do."

# Appendix B.

## The Defeated New York Ehrlich Bill and Excerpts from Report of Commissioner Benjamin Adverse to Its Provisions.

### The Ehrlich Bill.

STATE OF NEW YORK

Nos. 297, 694

Int. 297

IN ASSEMBLY

January 21, 1941

Introduced by Mr. EHRLICH—read once and referred to the Committee on Codes—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee.

AN ACT

To amend the penal law, in relation to attorney and the practice of law

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. Section two hundred and seventy-one of the penal law is hereby amended to read as follows:

271. None but attorneys to practice in the state. No natural person shall ask or receive, directly or indirectly, compensation for appearing for a person other than himself as attorney in any court, *or before any administrative officer, board commission, department, agency, tribunal or other body acting in a judicial or quasi-judicial capacity under the authority of the state or any municipal corporation or other civil division of the state in any case where the proceeding involves the decision of questions of law or the*

*preparation of a record which may be the basis of judicial review,* or before any magistrate, or for preparing deeds, mortgages, assignments, discharges, leases or any other instruments affecting real estate, wills, codicils, or any other instrument affecting the disposition of property after death, or decedents' estates, or pleadings of any kind in any action brought before any court of record in this state, or make it a business to practice for another as an attorney in any court or before any magistrate *or before any such administrative officer, board, commission, department, agency, tribunal or other body in any such case where the proceeding involves the decision of questions of law or the preparation of a record which may be the basis of judicial review,* unless he has been regularly admitted to practice, as an attorney or counselor, in the courts of record of the state; but nothing in this section shall apply to officers of societies for the prevention of cruelty, duly appointed, when exercising the special powers conferred upon such corporations under section one hundred and twenty-one of the membership corporations law. *The right of any person to appear by attorney before any administrative officer, board, commission, department, agency, tribunal acting in a judicial or quasi-judicial capacity under the authority of the state or any municipal corporation or other civil division of the state shall not be denied.*

2. This act shall take effect September first, nineteen hundred forty-one.

**Extracts from the Benjamin Report.**

Hon. Robert N. Benjamin, "Administrative Adjudication in the State of New York" (1942), Volume 1, pages 117-118:

> "Representation by Certified Public Accountants is frequent in the Income Tax Bureau and Corporation Tax Bureau. * * *
>
> "Certified Public Accountants are employed in tax matters for other reasons—perhaps because the question involved is primarily one of accounting

practice, or because the accountant originally prepared the return in question (or the accounts which it reflects) and is thought to be best qualified to explain it or because the accountant will perform these services at little extra cost."

Benjamin's Report, Volume 4, pages 36-38:

"If the taxpayer is not satisfied with a decision rendered after an informal hearing, the case is scheduled for a formal hearing. In instances in which the taxpayer insists that a formal hearing be held without an informal hearing, the informal hearing is not held. Usually, however, both hearings are held.

* * * * * *

"Formerly all informal hearings were conducted by the present Director of the Bureau and all formal hearings by one member of the State Tax Commission. Since that member of the State Tax Commission has retired, all informal hearings are conducted by a single member of the Board of Conferees or, rarely, by the Director or Deputy Director, and all formal hearings are conducted by the Director of the Bureau or the Deputy Director.

"*None of the hearing officers is a lawyer* or has had any formal training in the law of evidence. None of the members of the Board of Conferees had ever conducted a hearing prior to his appointment. * * *

"Taxpayers are represented in nearly all cases by an attorney *or an accountant,* although in a few cases officers of the corporation appear without counsel. No provision is made by statute or regulation limiting or controlling in any way the right to appear before the Bureau at hearings or otherwise."

Benjamin's Report, Volume 4, pages 283-284:

"In considering the problems of lay representation here, it will be convenient to discuss them first as they concern certified public accountants, and then as they concern other lay representatives.

"The position of certified public accountants is to be distinguished from that of other lay representatives in several respects. Besides presenting satis-

factory evidence of academic and professional qualifications, an accountant must, to be certified, pass a difficult examination. Certification thus offers assurance of mental and professional capacity. Once certified, the accountant is subject to disciplinary controls; his certificate may be suspended or revoked for (among other things) 'any fraud, deceit or gross negligence in the public practice of accountancy.' The ordinary professional work of a certified public accountant, moreover, involves to a considerable extent the same mental processes of discrimination and argument by analogy that a lawyer's work involves."

"Taking into account the considerations discussed above and in the main report, *it is recommended that certified public accountants be permitted to represent taxpayers at any stage of a tax proceeding, including the formal hearing stage.* * * *